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GFSI, INC. d/b/a GEAR FOR SPORTS, INC.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ROBERT TRENT JONES II, INC., and ROBERT
TRENT JONES LICENSING GROUP, LLC,

Plaintiffs,

v.

GFSI, INC. d/b/a GEAR FOR SPORTS, INC.,

Defendant.

Case No. C07-04913-SC

**DEFENDANT GFSI, INC.'S MOTION
FOR LEAVE TO FILE AN
AMENDED ANSWER AND
COUNTERCLAIM**

Date: May 23, 2008

Time: 10 a.m.

**Judge: Samuel Conti
Courtroom 1**

Bryan Cave LLP
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Santa Monica, California 90401-2386

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2 Pursuant to Federal Rules of Civil Procedure 13(f) and 15(a), Defendant GFSI, Inc.,
3 d/b/a Gear For Sports, Inc. ("GFSI") submits the following Motion to Amend their Answer
4 with these Points and Authorities in response to the Complaint filed by Plaintiffs Robert
5 Trent Jones II, Inc., and Robert Trent Jones Licensing Group, LLC (collectively,
6 "Plaintiffs"), and states in support of such Motion the following:
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9 **I. INTRODUCTION**

10 Plaintiffs filed their Complaint in this matter on September 21, 2007, and
11 served GFSI on October 12, 2007. GFSI filed its answer on November 1, 2007. Plaintiffs
12 then filed a Motion for a Preliminary Injunction on December 3, 2007, for which a hearing
13 was held on January 24, 2008.

14 Based on the matters attested to at the hearing, and information obtained
15 since GFSI's answer was filed, GFSI has learned new information that merits the filing of
16 an amended answer along with a counterclaim. Specifically, GFSI has reason to believe
17 that Plaintiffs became weary of their business relationship with GFSI and therefore
18 unreasonably withheld their consent to sell RTJ Apparel to certain stores in order to
19 leverage a better deal with them when dissolving the business relationship. By insisting
20 that GFSI cannot sell to certain stores such as Stein Mart, Syms Corporation and TJ Maxx,
21 Plaintiffs acted in bad faith in violation of their implied duty of good faith and fair dealing,
22 thereby breaching the contract they had with GFSI. GFSI therefore seeks leave to file an
23 amended answer with a counterclaim for breach of contract. GFSI's counsel has notified
24 opposing counsel in writing of their intent to file this motion for leave and asked whether
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1 they would file an opposition, but have yet to hear from opposing counsel. A copy of the
2 amended answer is attached as Exhibit A.

3 **II. STANDARD OF REVIEW**

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5 Federal Rule of Civil Procedure 15(a) provides that leave to amend “shall be freely
6 given when justice requires.” Fed. R. Civ. P. 15(a). “Courts have been quite liberal in granting
7 leave to amend under Fed. R. Civ. P. 15(a) and 13(f).” *Cooper Dev. Co. v. Employers Ins. of*
8 *Wausau*, 765 F. Supp. 1429, 1432 (N.D. Cal. 1991). Indeed, leave to amend “should be denied
9 only when there is a showing of undue delay, bad faith, futility of amendment, or prejudice to the
10 opposing party.” *Id.*, citing *Hurn v. Retirement Fund Trust of Plumbing, Heating & Piping*
11 *Industry of So. Calif.*, 648 F.2d 1252, 1254 (9th Cir. 1981) (emphasis supplied). “Where there is
12 lack of prejudice to the opposing party and the amended complaint is obviously not frivolous, or
13 made as a dilatory maneuver in bad faith, it is an abuse of discretion to deny such a motion.” *Id.*
14 (internal quotations omitted).

15 **III. ANALYSIS**

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17 GFSI’s Motion for Leave to Amend its Answer and assert a Counterclaim should
18 be granted because there has been no undue delay, nor bad faith demonstrated, and the
19 Counterclaim will not prejudice Plaintiffs nor is it futile. The proceedings have only just begun.
20 Moreover, the basis for GFSI’s counterclaim derives, in large part, on the testimony of Robert
21 Trent Jones from the hearing on Plaintiffs’ Motion for a Preliminary Injunction that only occurred
22 on January 24, 2008. At that hearing Robert Trent Jones’ testimony demonstrated that he did not
23 know what a “discount store” really was. At one point in the hearing Plaintiffs’ counsel was asked
24 whether Macy’s Department Store was a “discount store” and Plaintiffs’ counsel responded at first
25 that they did not know, and then changed their mind and said that it was not a discount store.
26 These actions at the hearing prove what GFSI has already suspected: Plaintiffs’ prevented GFSI
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1 from selling to certain stores in bad faith, not truly believing those stores to be discount stores.
2 Hence, Plaintiffs actions in preventing GFSI from selling their clothing to Stein Mart, Syms
3 Corporation and TJ Maxx were all done in bad faith and not because those stores are “discount
4 stores”. Indeed, as is now obvious, Plaintiffs cannot tell what a discount store is—they have only
5 used that term as a sword to bludgeon the profits of GFSI by precluding GFSI from selling to
6 certain stores in an attempt to diminish GFSI’s profits.
7

8 These actions by Plaintiffs demonstrate that Plaintiffs failed to act within their duty of
9 good faith and fair dealing when they asserted that GFSI was selling to “discount stores” without
10 actually being able to define “discount stores”. GFSI should therefore be able to amend its
11 Answer to assert a Counterclaim to assert such claim.
12

13 CONCLUSION

14 For the reasons outlined above, this Court should grant GFSI’s Motion to Amend
15 its Answer and Assert a Counterclaim against Plaintiffs.
16

17 Respectfully submitted,

18 **BRYAN CAVE LLP**

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Robert J. Hoffman

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20 By: s/Tarun Mehta

Tarun Mehta

21 Attorneys for Defendant

22 GFSI, INC. d/b/a GEAR FOR SPORTS, INC.
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PROOF OF SERVICE

I am employed in the County of Jackson, State of Missouri. I am over the age of 18 and not a party to the within action. My business address is 1200 Main Street, Suite 3500, Kansas City, MO 64105.

On March 14, 2008, I served DEFENDANT'S MOTION FOR LEAVE FOR TO FILE AN AMENDED ANSWER AND COUNTERCLAIM, on each interested party in this action, as follows:

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☐ (BY MAIL) I placed a true copy of the foregoing document in a sealed envelope addressed to each interested party as set forth above. I placed each such envelope, with postage thereon fully prepaid, for collection and mailing at Bryan Cave LLP, Kansas City, Missouri. I am readily familiar with Bryan Cave LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

☐ (BY E-MAIL) I caused a true copy of the foregoing document to be served by e-mail transmission at the time shown on each transmission, to each interested party at the e-mail address shown above. Each transmission was reported as complete and without error.

Executed on _____, 2008, at Kansas City, Missouri.

☐ (FEDERAL ONLY) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare under penalty of perjury under the laws of the United States of America and the State of Missouri that the foregoing is true and correct.

s/Lisa Deacy